

**MDL 1570 PLAINTIFFS' EXECUTIVE COMMITTEES**

In re: Terrorist Attacks on September 11, 2001 (S.D.N.Y.)

<b>Plaintiffs' Executive Committee for Personal Injury and Death Claims</b>	<b>Plaintiffs' Executive Committee for Commercial Claims</b>
Ronald L. Motley (1944-2013) Jodi Westbrook Flowers / Donald A. Migliori, <i>Co-Chairs</i> MOTLEY RICE LLC James P. Kreindler, <i>Co-Chair</i> KREINDLER & KREINDLER LLP	Stephen A. Cozen, <i>Co-Chair</i> Sean Carter, <i>Co-Chair</i> COZEN O'CONNOR
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June 16, 2020

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 Washington, DC 20005-3807

*In Re: Terrorist Attacks on September 11, 2001*, 03 MDL 1570 (GBD) (SN)

Dear Chris, Nicole, and Matt:

We write on behalf of plaintiffs in the *Burnett*, *Federal*, *O'Neill*, and *Continental* cases, to offer a final proposal for coordinated proceedings as to Sudan in those cases.<sup>1</sup> We anticipate that you may hear separately from counsel for the *Ashton* Plaintiffs.

The *Burnett*, *Federal*, *O'Neill* and *Continental* Plaintiffs have reached agreement on a consolidated amended complaint as to Sudan, which would allow for coordinated proceedings as to Sudan in those cases. The process took longer than we had hoped, owing to the fact that we did not have access to our physical files and have been unable to meet in person with our consultants due to the present health crisis, but the time invested in reaching agreement on a common complaint will simplify further proceedings as to Sudan and the duration is inconsequential in light of Sudan's failure to appear for more than 15 years following service. The *Burnett* and *Federal* plaintiffs are prepared to consent to relief from the defaults entered against Sudan, provided that Sudan consents to the filing of the consolidated amended complaint in *Burnett*, *Federal*, *O'Neill*, and *Continental*, and consents to counsel accepting service of that complaint on Sudan's behalf.

While we appreciate that Sudan would prefer to avoid the full record now available concerning its sponsorship of al Qaeda and further developments in the legal standards applicable to plaintiffs' claims, Sudan's opposition to amendment is in conflict with the governing legal standards and case

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<sup>1</sup> Sudan still has not entered any appearance in any of the cases other than *O'Neill*, and has taken no action to seek relief from the defaults entered against it. This proposal presumes that Sudan intends to seek relief from those defaults, despite Sudan's inaction to date. By offering this proposal, plaintiffs are in no way agreeing that Sudan could make a showing sufficient to secure relief from the defaults, and in fact the governing standards indicate that it is not entitled to such relief.

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 June 16, 2020  
 Page 2

management orders for this MDL. Among other reasons, amendment of the pleadings is appropriate and necessary because: (1) plaintiffs have been severely prejudiced as a result of Sudan's failure to appear for more than 15 years, and that prejudice can only be partially ameliorated through amendment of the pleadings; (2) plaintiffs with defaults against Sudan refrained from amending their pleadings previously precisely because of Sudan's failure to appear and the resulting defaults entered against it; (3) there have been intervening developments in the law that are properly addressed only through an amendment; (4) there have been further evidentiary and factual developments directly relevant to the claims against Sudan, including the declassification of records by the CIA as late as 2018, which provide additional grounds for amendment; (5) plaintiffs are permitted to present extrinsic materials in support of their theories of jurisdiction as to Sudan, and it makes no sense to require the Court to filter through those extrinsic materials (which include recently declassified records) without an adequate roadmap in the form of an updated pleading; and (6) the filing of the proposed consolidated amended complaint in the *Burnett*, *Federal*, *O'Neill*, and *Continental* cases is consistent with the case management orders governing the management of this MDL, which specifically contemplate that common pleadings and motions should be filed wherever possible. For these and other reasons, plaintiffs in the *Burnett* and *Federal* actions in which defaults have been entered against Sudan are agreeable to consenting to relief from those defaults only if Sudan consents to the filing and acceptance of service of a consolidated amended pleading as to Sudan in the *Burnett*, *Federal*, *O'Neill*, and *Continental* cases.

Based on these considerations, we would ask that you reconsider your position with regard to plaintiffs' proposal. To the extent that Sudan wishes to preserve its right to argue that amendments asserting particular bases of jurisdiction or legal theories had to be submitted within a particular time period, we would be willing to discuss a compromise that would allow Sudan to preserve those arguments, subject to the filing and acceptance of service in the first instance of an amended pleading to help frame the issues and without waiver of plaintiffs' rights to argue that all such amendments are timely and proper.

Finally, we intend to write to the Court promptly to request that proceedings in the *O'Neill* action be stayed, and that the Court endorse the proposal outlined above. In light of the pending Motion to Dismiss, please advise at your earliest opportunity whether you consent to this proposal so that we can promptly notify the Court of our agreement.

We look forward to hearing back from you in the near future, and would welcome the opportunity to speak with you concerning these issues.

Respectfully submitted,

COZEN O'CONNOR

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June 16, 2020  
Page 2

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